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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN DUANE BURGESS, JR.,

Defendant and Appellant.

E039124

(Super.Ct.No. INF50588)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas N. Douglass, Jr.,
Judge. Affirmed.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Barry Carlton, Supervising
Deputy Attorney General, and Theodore M. Cropley, Deputy Attorney General, for
Plaintiff and Respondent.

Defendant and appellant Kevin Duane Burgess, Jr., who was charged with possession of more than an ounce of marijuana (Health & Saf. Code, § 11357, subd. (c)), moved to suppress the prosecution's evidence against him, contending that it was the product of an unlawful detention. (Pen. Code, § 1538.5.) The trial court denied the motion. Defendant then entered a negotiated plea, and the trial court granted summary probation for a period of three years.

On appeal, defendant contends that the trial court erred in denying his motion to suppress evidence since the police were not justified in detaining him and subsequently searching his car. We disagree and affirm.

FACTUAL BACKGROUND

The following statement of facts is derived from the hearing on the motion to suppress: On March 4, 2005, at approximately 10:10 p.m., Officers Jonathan Enos and Michael Mauch were dispatched to the scene of a shooting in Cathedral City. Two witnesses told Officer Enos that they observed an older model four-door black car drive by, and that they heard gunshots fired from that car. One of the witnesses also said she observed the car driving westbound on Corral Road and that a tan-colored car appeared to be chasing it. Officer Enos broadcast this information over the radio so that other police units in the area could look for the car.

Officer Abraham Michael Tokier was approximately three miles away from the scene of the shooting when he heard the radio call. He parked his car at a certain intersection, and within less than a minute, he saw a black sedan traveling westbound. Officer Tokier pulled up behind the car to get a better look at it and noticed that the rear

window was shattered out. It appeared that a bullet had gone through the window.

Officer Tokier requested backup units to assist him in stopping the car. Officer Tokier initiated a high risk traffic stop. A high risk stop is a vehicle stop where there is a potential that the suspect is armed.

Officer Daniel Ray Anes heard the radio calls regarding the black car at issue. He testified that one of the radio calls stated that there was “a possible black Nissan Sentra” involved. However, that information was updated in a subsequent radio call to say that the car involved was a black four-door older model vehicle. In addition, the car at issue had two Hispanic male occupants. Officer Anes arrived at the location where Officer Tokier had pulled over the car. The car was a 1996 black Cadillac with four doors. Officer Anes observed defendant, a Black male, standing outside the driver’s side door. He also noticed a hole in the right rear corner of the back window. He thought the window had been shot with a bullet. Officer Anes walked up to the car to inspect the window, and while he was inspecting it, he smelled an odor of marijuana coming from inside the car. He searched the car and found a small electronic scale and a large plastic bag containing a green, leafy substance that appeared to be marijuana. He did not find a gun in defendant’s car and determined that something other than a bullet went through it. Defendant was arrested and searched. Officer Anes found \$877.05 in defendant’s pocket.

ANALYSIS

Defendant argues that his detention was unlawful because Officer Tokier lacked reasonable suspicion to believe that defendant was involved in criminal activity. He

concludes that all evidence found as a result of the detention should have been suppressed. We disagree.

A. Standard of Review

In reviewing the denial of a motion to suppress evidence, “[w]e defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

B. The Detention and Search Were Reasonable

“A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

Here, Officer Tokier heard the radio call describing a “late model four-door black sedan” that had been involved in a shooting. Within minutes of hearing the call, he observed a car driving by that matched the description of the car involved in the shooting. Officer Tokier observed the car only three miles from where the shooting occurred, and observed what appeared to be a gunshot in its rear window. In addition, the car was traveling in the same direction that the car involved in the shooting was reportedly traveling. Under these circumstances, it was objectively reasonable for the officer to suspect that defendant’s car was involved in the shooting and to pull the car over.

Defendant argues that his car did not match the description of the suspect car, since it could not be “easily confused with a Nissan Sentra.” Although one of the radio calls stated that a car was possibly a black Nissan Sentra, that information was later corrected to state that the car involved was “a black four-door older model vehicle. . . .” Defendant was driving a 1996 four-door black Cadillac. His car certainly matched the description of the car involved in the shooting.

Defendant also asserts that he did not match the description of the occupants in the black car at issue. They were described as two Hispanic males with shaved heads. In contrast, defendant is a Black male, and he was the sole occupant of his car. As the prosecution pointed out in its argument at the suppression hearing, defendant had very short hair, and could have been confused for a dark Hispanic man. Furthermore, a second occupant could have been dropped off after the shooting.

In sum, defendant’s car matched the description of the suspect car, it appeared to have a bullet hole in the window, and it was located in the same vicinity where the shooting occurred, right after the shooting occurred. Thus, the police had reasonable suspicion to stop defendant’s car and investigate. Furthermore, the police were justified in searching defendant’s car, since they had probable cause to believe that it contained contraband (i.e., the marijuana odor emanating from the car). (*People v. Chavers* (1983) 33 Cal.3d 462, 469.) Thus, since Officer Tokier acted in an objectively reasonable manner in stopping and detaining defendant for investigation, the trial court properly denied the motion to suppress evidence. (See *People v. Conway* (1994) 25 Cal.App.4th 385, 390.)

DISPOSITION

The judgment is affirmed.

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/s/ Hollenhorst
J.

We concur:

/s/ Ramirez
P.J.

/s/ McKinster
J.